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IN THE SUPREME COURT OF THE UNITED STATES

MOTION FILED October Term, 1973

MAR 15 1974

No. 73-698

FRIENDS OF THE EARTH, et al.,

Petitioners,

vs.

GILBERT R. STAHL, et al.,

Respondents,

and

STATE OF COLORADO, et al.,

Intervenors-Respondents.

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE IN SUPPORT OF PETITION FOR REHEARING OF DENIAL OF PETITION FOR WRIT OF CERTIORARI, AND BRIEF AMICUS CURIAE

Richard B. Collins
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October,Term, 1973

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804 North Beaver
Flagstaff, AZ 86001

Attorneys for Movants

INTRODUCTION

1. This motion is filed by the Shonto Chapter of the Navajo Nation, Naakai DitX'oi, aka, Paul Goodman, Lemarr Badoni, Teddy Holiday, Jessie Yazzie Black, Jimmy Goodman, and Begay Bitsinnie, seeking leave of this Court to file a brief in support of the motion by petitioners herein for rehearing of this Court's denial of the petition for writ of certiorari.

NATURE OF THE CASE

2. This action was filed by one individual and two organizations oriented towards environmental issues, to enjoin named governmental officials from operating the Glen Canyon Dam in such a manner as to back the waters of the reservoir up into the Rainbow Bridge National Monument, which lies wholly within the Navajo Indian Reservation in southern Utah. The United States District Court for the District of Utah held in favor of plaintiffs (peti-

tioners herein), on February 27, 1973, and granted the requested injunction. Friends of the Earth v. Armstrong, 360 F.Supp. 165 (D.Utah 1973). The Court of Appeals for the Tenth Circuit, sitting en banc, reversed the lower court, Friends of the Earth v. Armstrong, ___F.2d___, (10th Cir., Aug. 2, 1973), with two judges dissenting. The petition for writ of certiorari was denied by this Court on January 21, 1974, 42 U.S.L.W. 3435, and petitioners have now filed a motion for rehearing of that determination.

DESCRIPTION OF MOVANTS

3. The Shonto Chapter of the Navajo Nation is a local governmental unit of the Navajo Nation, consisting of all of the residents of the Shonto Community. This community is located in the vicinity of Navajo Mountain, and embraces an area extending to within a few miles of Rainbow Bridge. In this matter, as in many other

areas of concern for local Navajo people, the Chapter can be said to be the voice of all of the individual members of the community, speaking together.

4. Movants DitŁ'oi, Badoni, Holiday, Black, Goodman, and Bitsinnie are individual Navajo Indians and enrolled members of the Navajo Tribe of Indians, who reside in the general vicinity of Rainbow Bridge. Movants DitŁ'oi, Badoni, and Holiday are qualified and recognized among their people as medicine men---religious leaders of considerable stature and importance for the Navajo, steeped in knowledge of Navajo history and culture and traditional rites and ceremonies of ancient origin.

THE INTEREST OF MOVANTS

5. The magnificent Rainbow Bridge, hidden in the labyrinthine canyons of the Rainbow Plateau to the northwest of Navajo Mountain, has long had enormous

spiritual significance for movants particularly and for the Navajo people of the region generally. In the Navajo origin myth, the fountainhead of Navajo religious belief and ceremony, the Bridge was created by a god to provide a crossing over a vast canyon for the Diné, the Navajo people, in their passage to their present homeland. Since then, the Bridge has been regarded as a dwelling-place for many tribal deities, and it has been the site of numerous sacred rites performed by Navajo medicine men, including movants Ditχ'oi, Badoni, and Holiday. Movants believe that the flooding of Bridge Canyon in the vicinity of Rainbow Bridge by the rising waters of Lake Powell will desecrate and destroy many holy places of great importance, will render ineffective the prayers, sings, and other ceremonies which have called upon the spiritual power associated with the Bridge, and will seriously threaten the spiritual and

cultural well-being of the Navajo people.

Already, the truth of these beliefs has become apparent to movants. The incursion of the water within the boundaries of Rainbow Bridge National Monument has brought thousands of Anglo tourists in their motorboats, approaching the Bridge with no regard for its intensely sacred character, nor even for its overwhelming beauty. These persons have deeply eroded the holy nature of the place for the Navajo, and their disrespect, as shown by the noise they make and the litter they leave, has discouraged persons such as movants from utilizing the Bridge for spiritual purposes. The flooding of the Bridge will permanently bury or deface many holy sites, and will allow the tourists to drive their boats up under the Bridge itself, and beyond. The result of this sacrilege has been, and will continue to be, severe emotional and spiritual

distress to movants, which they assert threatens their most profound religious beliefs, and their very way of life. Movants contend that as the guardian of their people, the United States, and especially the named defendants in this case, have an affirmative duty to protect these vital interests of the Navajo from harm.

Movants further believe that the flooding of Rainbow Bridge invades a substantial property right which they claim in the Bridge. Movants' ancestors, unlike the Navajo living to the south and east of them, never surrendered to the United States. Instead, they sought refuge in the canyons of the Rainbow Plateau until the soldiers went away. Although the whites later made Rainbow Bridge one of their national monuments, movants feel they have never ceded their rights to the lands where this holy place is located.

Attached to this motion, as

Exhibits A through I, are resolutions of the Shonto Chapter and affidavits by the individual movants expressing in somewhat more detail the interest asserted herein.

6. In June, 1972, movants Ditχ'oi, Badoni and Shonto Chapter, agreeing with the legal claim of and relief sought by petitioners herein, sought to intervene in this action while it was pending in the district court, under Rule 24(b), F.R.Civ.P. As applicant-intervenors, movants there took the position, and reaffirm it here, that not only does no party on this case represent the interests of movants, but in fact those interests have been completely ignored by all parties, including the environmentalists who initiated the action, despite the fact that movants stand to suffer a more direct and profound adverse impact by the flooding of Rainbow Bridge than perhaps anyone else.

On June 22, 1972, the district

court, exercising its discretion under Rule 24(b), denied movants' application to intervene. When this initial attempt to assert their interest was thus frustrated, movants awaited the outcome of the case, hoping for an ultimately favorable decision, or at least a further forum in which to make their views known. After the decision by the Tenth Circuit, movants, expecting this Court to hear such an important matter, fully intended to seek leave to file a brief amicus curiae on the merits. Movants are of the view that for this Court to decline to grant the petition for writ of certiorari, thereby in effect deciding a question of vital import for Native Americans, without any consideration of Native Americans' views, exemplifies and sustains the historical indifference of white society to the most deeply felt beliefs of the Indian people.

CONCLUSION

7. That Rainbow Bridge is an object of veneration for the Navajo was at least recognized in the opinion of the district court, 360 F.Supp., at 173, but no Navajo people have thus far been allowed to represent their substantial stake in preserving the integrity of this great natural shrine. It is therefore appropriate that this Court vacate its order of January 21, 1974, denying petitioners' petition, and allow - movants to file their brief amicus curiae in support of the petition for writ of certiorari, which brief is attached hereto, and movants respectfully so move.

Respectfully submitted,

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Post Office Box 161
Mexican Hat, Utah

C. Benson Hufford
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804 North Beaver
Flagstaff, Arizona

Attorneys for Movants

Resolution

Shonto Chapter

The people of Shonto Chapter unite in our opposition to the flooding of Rainbow Bridge by Lake Powell.

WHEREAS:

1. The Rainbow Bridge has long held a deep religious meaning for the Navajo people.

2. The Rainbow Bridge's similarity to the meteorological phenomenon of a Rainbow has long made it the site of Navajo Religious ceremonies for rain.

3. The land within the Rainbow Bridge National Monument has long been used by Navajos living in the area for grazing livestock.

4. Adequate grazing land within the Navajo Reservation has always been scarce, and the flooding of grazing areas within the Monument area will be of severe consequences to Navajos in the area since they will have no other place to graze their livestock.

5. Navajos residing in the area of Rainbow Bridge make their livlihood from tourists who visit the monument.

6. The failure of the United States Government, the Secretary of Interior, and the Commissioner of the Bureau of Reclamation to take adequate protective measures against the flooding of Rainbow Bridge is unreasonable and unjustified and in violation of the law.

NOW THEREFORE BE IT RESOLVED:

That the Shonto Chapter goes on record opposing the Flooding of Rainbow Bridge.

And demands that the Secretary of Interior and the Commissioner of the Bureau of Reclamation take immediate action to prevent further flooding of Rainbow Bridge National Monument.

CERTIFICATION

The foregoing resolutions was duly considered by the Shonto Chapter at a duly called chapter meeting at which a quorum was present and this resolution was approved by a vote of 36 in favor and 0 oppose this 8th day of April, 1972.

/s/ Lawrence Isaac, Sr.
Chapter President

/s/ Joe Smith
Chapter Vice President

/s/ Grey Maloney
Chapter Secretary

Resolution

Shonto Chapter

The chapter met on April 8, 1972, and passed the following resolution.

WHEREAS:

1. The Rainbow Bridge has long been an object of veneration, with a deep religious meaning for the Navajo people.

2. The area within Rainbow Bridge National Monument is of much economic importance to Navajos in the area who depend on it for grazing their livestock and making their livelihood from tourists who visit the monument.

3. The failure of the Secretary of Interior and the Commissioner of the Bureau of Reclamation to take adequate measures to protect Rainbow Bridge has resulted in flooding by Lake Powell and danger to the bridge itself to the detriment of Navajo people living in the area.

4. We fully endorse the policy of Chairman Peter MacDonald and the National Tribal Chairmen's Association which strongly advocates vigorous protection of Indian natural and cultural resources.

NOW THEREFORE BE IT RESOLVED that we retain the Services of Dinebeiina Nahiilna Be Agaditahe (DNA) for the express purposes of representing our chapter in the Rainbow Bridge matter now before the Federal District Court in Utah.

Exhibit B-1

CERTIFICATION

The foregoing resolution retaining legal counsel was passed by the membership of the Shonto Chapter, Navajo Nation.

Dated: April 8, 1972.

/s/ Lawrence Isaac, Sr.
Chapter President

/s/ Joe Smith
Chapter Vice President

/s/ Grey Maloney
Chapter Secretary

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF UTAH,

CENTRAL DIVISION

FRIENDS OF THE EARTH, et al.,	)	
	)	
Plaintiffs,	)	Civil No.
	)	
v.	)	C-116-71
	)	
ELLIS L. ARMSTRONG, Commissioner, Bureau of Reclamation, et al.,	)	
	)	
	)	
Defendants.	)	
	)	

UNITED STATES OF AMERICA)
) ss.
STATE OF UTAH)

AFFIDAVIT OF NAKAI DITŁ'OI aka PAUL GOODMAN.

NAKAI DITŁ'OI, being first duly sworn, deposes and says that:

1. I was born near Oljatoh, Utah in 1885. I began to study under Sam Chief to become a medicine man when I was ten years old. From the time I reached twenty to the present I have been a medicine man in the Utah portion of the Navajo Nation.

2. I have conducted countless religious ceremonies and sings throughout the area surrounding Rainbow Bridge and Navajo Mountain. Rainbow Bridge is extremely sacred to the Dine (the Navajo People), as are many sites and much of the

area surrounding the bridge. The water from the lake has already entered the Canyon of the Rainbow Bridge and has covered grounds sacred to the Dine.

3. Tse Nani' ahi is the Navajo name for Rainbow Bridge. When the Dine were emerging from the east they stopped on a large mesa near Navajo Mountain to make a home on the mountain for Lageinayai. He is a god who was given lightning to create rain. His name means "came into being in one day." In gratitude for his home on Navajo Mountain, Lageinayai promised to protect the Dine and look after their well-being. Sometime later a group of the Dine left this home with a god named Danaiize. He has the power to create and to travel on the rainbow. The Dine reached a canyon which they could not cross. The Dine did not know what to do. Danaiize told them he would create a rock rainbow which would be a bridge for the Dine. It was in this way that the Dine were able to cross the Canyon of the Rainbow Bridge.

4. Since that time the bridge has been a protective shield for Navajo Mountain and the Dine. Prayers are offered which call on Tse Nani'ahi to continue the beautiful way and provide rain for the Dine. In this way evil is kept away from the Dine and their livestock.

5. There is a cave down the canyon from the Rainbow Bridge. Medicine men come from all over the reservation to meet in this cave. There is also a sacred spring in the canyon near the cave. It is called "clear body male and female water." Its water is used in the prayers and to wash the sacred bundles of the medicine man. Ground turquoise and shells

are given to the spring to aid in the prayers for rain. Prayers are renewed and knowledge of the earth and the ways of the Dine is increased when the medicine men come to the cave. The water from the lake has already entered the canyon and covered both the cave and the sacred spring.

6. There are burial grounds in the canyon below the Rainbow Bridge. There are no burial sites under or near the bridge because that area is very sacred. The burial grounds should not be covered with water from the lake.

7. The water from the lake must not be allowed to fill the canyon under Tse Nani ahi. The religion of the Dine would be damaged and their lives threatened. The Dine would no longer be able to stand under the Rainbow Bridge and offer prayers for the good life, the livestock and for rain.

/s/ Paul Goodman
NAKAI DITĻ'OI aka PAUL GOODMAN

COUNTY OF SAN JUAN)
) ss.
STATE OF UTAH)

SUBSCRIBED and SWORN to before me this 17th day of March, 1972.

/s/ Myrtle H. Davis
NOTARY PUBLIC

My Commission Expires:

8-4-74

Exhibit C-3

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF UTAH,

CENTRAL DIVISION

FRIENDS OF THE EARTH, et al., Plaintiffs,	Civil No.
v.	C-116-71
ELLIS L. ARMSTRONG, Commissioner, Bureau of Reclamation, et al., Defendants.	

UNITED STATES OF AMERICA)
) ss.
STATE OF UTAH)

AFFIDAVIT OF PAUL GOODMAN

PAUL GOODMAN, being first duly sworn, deposes and says that:

I was born near Oljato, Utah in 1885, I began to study under Sam Chief to become a medicine man when I was ten years old. From the time I reached twenty to the present I have been a medicine man in the Utah portion of the Navajo Nation.

Rainbow Bridge is a sacred prayer ground for the Navajo people; because prayer for our people's protection against sickness, drought, prayer for good seasons, rain and good prayers for life are directed through the arch, from the top of Navajo Mountain, Navajo Mountain being a sacred prayer grounds too.

Exhibit D-1

Rainbow Bridge is believed to be made movable by the Black Lightning God, which is its means of spiritual transportation.

Below Rainbow Bridge in the canyons and the surrounding area there are also burial sites of Navajos, some being very old medicine men.

Also below the Bridge are sacred springs at which were offered sacred sacrifices of ground turquoise, shell, pollen of corn and flowers, these springs are now covered by water from the lake.

There was a place where medicine men go near the Bridge to have their yearly reunions and the refreshing of certain ceremonial chants and prayers, and the introductions of new medicine men.

Rainbow Bridge is like a mother for our people, it stands like a temple or church is to the Anglo Christians, we do not destroy whiteman's sacred articles, and shrines, nor do we destroy their religion, therefore this water should not be allowed by the white man to rise and cover our holy shrine of prayer.

/s/ Paul Goodman

COUNTY OF SAN JUAN)
) ss.
STATE OF UTAH)

SUBSCRIBED AND SWORN to before me this 13th day of February, 1974.

/s/ John T. Hennessey
NOTARY PUBLIC

My commission expires: 7/29/76

Exhibit D-2

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF UTAH,

CENTRAL DIVISION

FRIENDS OF THE EARTH, et al.,	)	
	)	
Plaintiffs,	)	Civil No.
	)	
v.	)	C-116-71
	)	
ELLIS L. ARMSTRONG, Commissioner Bureau of Reclamation, et al.,	)	
	)	
Defendants.	)	

UNITED STATES OF AMERICA)
) ss.
STATE OF UTAH)

AFFIDAVIT OF LEMARR BADONI

LEMARR BADONI, being first duly sworn, deposes and says that:

1. I was born near Rainbow Bridge on Navajo Mountain, Utah, and have lived in this area of the Utah portion of the Navajo Nation all of my life.

2. The Rainbow Bridge area is a sacred place to the Dine (the Navajo People). The bridge is a religious shrine to which prayers are directed as it is a life-giving force for the well-being of the Dine. If the water from the lake floods the canyon under the bridge, the world and lives of the Dine will be in jeopardy.

Exhibit E-1

3. There is a sacred spring on the side of Navajo Mountain. This spring flows toward the nearby Rainbow Bridge. Water is taken from the spring by medicine men and used in prayers involving Rainbow Bridge. Such prayers are offered to insure rainfall sufficient to meet the needs of the Dine, our livestock and our plants.

4. There are burial sites in the Canyon of the Rainbow Bridge which will be flooded by the water from the lake. Many of the graves are those of my family. The water will destroy their sacred nature.

5. During the spring and fall seasons the Dine gather herbs and plants in the area that will be covered with water. The herbs and plants are used in religious ceremonies and are made into medicine for the Dine and our livestock. The water will take the herbs and plants away from the Dine.

6. We graze our livestock in the canyons around Rainbow Bridge, especially during the winter when it is warmer there and shielded from the wind. If these grazing areas are flooded, there is no other place to take our livestock.

7. The flooding of the Canyon of the Rainbow Bridge will deprive the Dine from the income they receive from tourists. Navajos in this area rent horses to tourists and act as guides to the Canyon of the Rainbow Bridge which is already partly flooded by water from the lake.

8. The water should not be

be allowed to flood the Canyon of the Rainbow Bridge. The water would destroy a place of great religious meaning to the Dine.

(Right Thumbprint)
LEMARR BADONI

COUNTY OF SAN JUAN)
) ss.
STATE OF UTAH)

SUBSCRIBED AND SWORN to before me this 17th day of March, 1972.

/s/ Myrtle H. Davis
NOTARY PUBLIC

My Commission Expires:

August 4, 1974

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF UTAH,

CENTRAL DIVISION

FRIENDS OF THE EARTH, et al.,	)	
	)	
Plaintiffs,	)	Civil No.
	)	
v.	)	C-116-71
	)	
ELLIS L. ARMSTRONG, Commissioner, Bureau of Reclamation, et al.,	)	
	)	
Defendants.	)	

UNITED STATES OF AMERICA)
) ss.
STATE OF UTAH)

AFFIDAVIT OF TEDDY HOLIDAY

TEDDY HOLIDAY, being first duly sworn, deposes and says that:

I am a medicine man. I was born in March of 1914, at Douglas Mesa, Utah, and started to study to become a medicine man at an early age under the leadership of Dave Holiday who is my father and who lives at Oljato, Utah.

Rainbow Bridge was very significant during the period of the Long Walk to Ft. Sumner. The relatives of Navajos who were living there offered prayers to the Bridge for the return of their people because the Bridge was the most sacred place. They offered many offerings on these occasions.

Exhibit F-1

From that time and before then it has been sacred and no harm should be done to it. This goes for Navajo Mountain and the Rivers which now form the lake also.

Prayers were offered to the goods of life and for the growth of our Nation at the Bridge.

Our People who live here in this area are not property of the U.S. government because we and our People of this area never surrendered and therefore our land and what we have on it beongs to us, not the government or any whiteman.

The Bridge is our means of communication with our Gods and is our altar and the foundation on which our Native Religion is based. There are many medicine men still living among us who pray to the Bridge as I do. Therefore, our belief is still alive and we don't want to have our religion cut down.

The lake was to rise only a certain distance. It should be left as it was to begin with, which was not near Rainbow Bridge. They have already destroyed too much of our land. We will not allow any more destruction of our sacred ground.

If any part of the Bridge is touched by the waters our religion will crumble like the Bridge is bound to do. Our culture will weaken and die like the Bridge. This must not happen.

/s/ Teddy Holiday
TEDDY HOLIDAY

Exhibit P-2

COUNTY OF SAN JUAN)
) ss.
STATE OF UTAH)

SUBSCRIBED AND SWORN to before me this 14th day of February, 1974.

/s/ John T. Hennessy
NOTARY PUBLIC

My Commission Expires:

July 29, 1976

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF UTAH,

CENTRAL DIVISION

FRIENDS OF THE EARTH, et al.,	)	
	)	
Plaintiffs,	)	Civil No.
	)	
v.	)	C-116-71
	)	
ELLIS L. ARMSTRONG, Commissioner, Bureau of Reclamation, et al.,	)	
	)	
	)	
Defendants.	)	
	)	

UNITED STATES OF AMERICA)
) ss.
STATE OF UTAH)

AFFIDAVIT OF JESSIE YAZZIE BLACK

JESSIE YAZZIE BLACK, being first duly sworn, deposes and says that:

I was born near Mystery Valley, Arizona, in 1933 and have lived on the Utah portion of the Navajo Nation ever since.

Rainbow Bridge was created to be a place for the Navajo People to pray and make offerings in order to obtain a good way of life. It is a place to go, like a Shrine, to repent. The Navajo have no other similar place. If the water is put there this place will be destroyed and there will be no other place to worship in the same way.

My People, those from this area,

never surrendered to the United States government like People of the South did. The Bridge and the land around it is still ours. It cannot be destroyed.

We have had our lands stolen from us throughout history. Now they are trying to take our sacred places and destroying our culture. Our lives aren't the same since this destruction. The Bridge must not continue to be flooded.

The Spring and the cave near the Bridge are already flooded. Our sacred places are already covered with water. The further the water rises, the more of our culture is destroyed. The waters must recede.

Our family farm and grazing area is nearby in Paiute Canyon and is also covered by water. Our peach trees and grazing lands are lost. This water covered good land, now it is ruined and we can't produce needed food for ourselves.

Take the water from our sacred lands and give us back our Shrines.

/s/ Jessie Yazzie Black
JESSIE YAZZIE BLACK

COUNTY OF SAN JUAN)
) ss.
STATE OF UTAH)

SUBSCRIBED AND SWORN to before me this 13th day of February, 1974.

/s/ John T. Hennessy
NOTARY PUBLIC

My Commission Expires:
July 29, 1976

Exhibit G-2

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF UTAH,

CENTRAL DIVISION

FRIENDS OF THE EARTH, et al.,	)	
	)	
Plaintiffs,	)	Civil No.
	)	
v.	)	C-116-71
	)	
ELLIS L. ARMSTRONG, Commissioner, Bureau of Reclamation, et al.,	)	
	)	
Defendants.	)	

UNITED STATES OF AMERICA)
) ss.
STATE OF UTAH)

AFFIDAVIT OF JIMMY GOODMAN

JIMMY GOODMAN, being first duly sworn, deposes and says that:

I was born at Cowsprings, Arizona, in 1934. I am the son of a medicine man who is well known by all my People.

Rainbow Bridge is our Holy Shrine, and it is our mother. The Bridge is mentioned in every prayer that is offered by every medicine man.

We want to have this, our Holy Shrine, left alone by the whiteman. If they destroy this it would be killing our God. Just because they have killed their own God and Jesus, they should not kill ours. We want this area preserved.

Exhibit M-1

Rainbow Bridge was put here by our holy Gods. It is a means by which we communicate with the Gods for the good life and whatever else we pray for.

Rainbow Bridge is our Religion and the whiteman wants to deprive us of our religion and our holy places.

Members of our relatives never surrendered to the government. Therefore our land belongs to us just like in the beginning. The whiteman cannot put his water on our holy ground.

/s/ Jimmie Goodman, Sr.
JIMMY GOODMAN

SUBSCRIBED AND SWORN to before me this 13th day of February, 1974.

/s/ John T. Hennessey
NOTARY PUBLIC

My Commission Expires:

July 29, 1976

Exhibit H-2

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF UTAH,

CENTRAL DIVISION

FRIENDS OF THE EARTH, et al.,	)	
	)	
Plaintiffs,	)	Civil No.
	)	
v.	)	C-116-71
	)	
ELLIS L. ARMSTRONG, Commissioner, Bureau of Reclamation, et al,	)	
	)	
	)	
Defendants.	)	
	)	

UNITED STATES OF AMERICA)
) ss.
STATE OF UTAH)

AFFIDAVIT OF BEGAY BITSINNIE

BEGAY BITSINNIE, being first duly sworn, deposes and says that:

I was born in Oljato, Utah, in 1925 and have lived in the area ever since that time. As a lifelong resident of the area I am well acquainted with the Rainbow Bridge. I know of its religious meaning to my People.

Rainbow Bridge is mentioned by the medicine men in all prayers offered for people in the "holy Way". It is a Holy Shrine to our people and their way of life.

When our people were driven to Ft. Sumner, our relatives stayed here near

this holy place, therefore we never surrendered to the United States government, nor are we about to surrender a Holy Shrine to be open to the whiteman for their enjoyment and pleasure.

Rainbow Bridge is held very sacred to the Navajo People because it has the power to overcome all evil. It is meant for our People to use to overcome all evil.

Rainbow Bridge is a work of our God which still stands as it had been placed by the Rainbow God. It must continue to stand unhindered while we Navajo are still present here on this earth. If you destroy our Bridge you must alsodestroy our People.

/s/ Begay Bitsinnie
BEGAY BITSINNIE

COUNTY OF SAN JUAN)
) ss.
STATE OF UTAH)

SUBSCRIBED AND SWORN to before me this 13th day of February, 1974.

/s/ John T. Hennessey

My Commission Expires:

July 29, 1976

Exhibit I-2

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1973

No. 73-698

FRIENDS OF THE EARTH, et al.,

Petitioners,

vs.

GILBERT R. STAMM, et al.,

Respondents,

and

STATE OF COLORADO, et al.,

Intervenors-Respondents.

BRIEF OF NAAKAI DITŁ'OI, LEMARR BADONI, TEDDY HOLIDAY, JESSIE YAZZIE BLACK, JIMMY GOODMAN, BEGAY BITSINNIE, AND THE NAVAJO CHAPTER, AS AMICI CURIAE, IN SUPPORT OF PETITION FOR REHEARING OF DENIAL OF PETITION FOR WRIT OF CERTIORARI

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Attorneys for Amici

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I. INTEREST OF AMICI

These amici are six individual Navajo Indians who reside in the vicinity of Rainbow Bridge, and the Shonto Chapter of the Navajo Nation, a community embracing an area which extends to within a few miles of the Bridge. For these person and for thousands of other Navajo Indians, the Rainbow Bridge is not simply a great natural phenomenon: it is, rather, a shrine whose significance to the Navajo is comparable to the importance of Calvary to the Christian, or the Kaaba to the Moslem. The Navajo origin myth portrays the Bridge as the work of a guardian god helping the Diné (or the People, as the Navajo call themselves) in their passage to their present homeland. As such, the Bridge is referred to in many of the timeless and beautiful prayers and songs invoked

by Navajo medicine men in their intricate ceremonial rites. In the present day, the Bridge is additionally regarded as a dwelling place of many of the spirits who watch over the Diné, and its fate is thus inextricably linked with the safety and well-being of the Diné themselves. Not surprisingly, the profoundly sacred character of this magnificent arch has made it a site of countless religious observances by Navajo medicine men, and it has been a place for these medicine men to rejuvenate themselves spiritually. Further, many specific locales in Bridge Canyon, near Rainbow Bridge itself, have over time come to have considerable religious importance in their own right, as burial grounds, sites of particular ceremonies, or for other reasons.

In light of these considerations,

amici are deeply concerned over the flooding of Bridge Canyon in the vicinity of the Bridge. They view this prospect as destructive to an entire body of belief, and thus to their way of life. Their religion will be desecrated, its power extinguished, and their gods will abandon them. If one set out singlemindedly to undermine the traditional culture of the Navajo, few starting points could be better chosen than the flooding of Rainbow Bridge.

Amici would make further reference to the statement of their interest as set out in their Motion for Leave to File Brief Amicus Curiae, and the affidavits attached thereto, submitted with this brief, all of which shed greater light on the interest they assert in this motion.

II. ARGUMENT

A. THE FLOODING OF RAINBOW BRIDGE BY DEFENDANTS CONSTITUTES A SUBSTANTIAL INVASION OF THE RIGHT OF AMICI TO UNFETTERED EXERCISE OF THEIR RELIGIOUS BELIEFS.

It has been stated that Rainbow Bridge occupies a place of immense significance in Navajo religion. The action of defendants flooding this holy place invades the right of amici peacefully to practice their religion, and it imperils the very roots of the religion itself. It should be remembered that this is not just a case of the displacement of a place of worship. The Bridge itself is an object of worship, and its specific locality is holy ground for the Navajo. Desecration of the Bridge, therefore, is a frontal assault on the beliefs and religious practices of the Navajo.

The First Amendment's guarantee that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof..." applies to all citizens and it is of sufficient breadth to allow as wide a variety of beliefs as the spiritual needs of man deem necessary. Zorach v. Clauson, 343 U.S. 306 (1952). The right of conscience which it protects holds a preferred position over other, conflicting interests and rights, such as the economic interests asserted by respondents in this case. Marsh v. Alabama, 326 U.S. 501 (1946); Murdock v. Pennsylvania, 319 U. S. 105 (1943); Jones v. Opelika, 316 U.S. 584 (1942). Only a substantial and compelling state interest will be held to curtail such preeminent rights, and that interest must be clearly shown. Wisconsin v. Yoder, 406 U.S. 205

(1972); Sherbert v. Verner, 374 U. S. 398 (1963); People v. Woody, 40 Cal. Rep. 69, 394 P. 2d 813 (Cal. 1964); State of Arizona v. Whittingham, 19 Ariz. App. 27, 504 P. 2d 950 (Ariz. Ct. App. 1973).

Amici believe that if Congress can be said to have authorized that the Glen Canyon Dam and Reservoir be operated so as to flood Rainbow Bridge, that authorization unquestionably violates the First Amendment, in that it coerces amici and others like them to abandon a major portion of their religious beliefs and practices. The assertedly conflicting interests, amici contend, are either of insufficient weight to overcome the favored position of the religious rights of amici, or they can be fulfilled in other ways less destructive of Navajo beliefs.

Interestingly, the original authorization for the Glen Canyon Dam and Reservoir contained language, in Sections 1 and 3, by which Congress attempted to protect the very rights now being invaded. The enforcement of those sections amici see as a Constitutional obligation owed the Navajo people by the United States under the First Amendment, and the holding of the Court below, that these Sections may be ignored, is thus, a grave one indeed.

B. THE UNITED STATES, AS GUARDIAN OF THE NAVAJO PEOPLE, HAS AN AFFIRMATIVE DUTY AS A FIDUCIARY TO PROTECT RAINBOW BRIDGE FROM HARM.

In Seminole Nation v. United States, 316 U.S. 286 (1942), this Court described in forceful terms the "distinctive obligation of trust incumbent upon the Government in its dealing with these dependent and sometimes

exploited [Indian] people." 316 U.S., at 296. The government's acts with respect to its Indian wards, the Court there said, at 297, should be judged "by the most exacting fiduciary standards." See also, Navajo Tribe v. United States, 364 F. 2d 320 (Ct. Cl. 1966); Oneida Tribe v. United States, 165 Ct. Cl. 487, cert. denied, 379 U.S. 946 (1964). That standard has been applied recently in a context similar to the present one, in Pyramid Lake Paiute Tribe of Indians v. Morton, 354 F. Supp. 252 (D.D.C. 1973). There, the district court held that the government's fiduciary obligations to the Indians imposed a duty on the Secretary of the Interior to take the broadest possible steps to insure against the depletion of Pyramid Lake by nearby irrigation projects.

Amici urge that the government's similar obligation to the Navajo requires that Rainbow Bridge be protected from the waters of Lake Powell. The government's policy toward the Indians is and has been one of protecting the integrity of the Indian tribes and attempting to strengthen tribal structures. Williams v. Lee, 358 U.S. 217 (1959). Indeed, the reservation of certain lands for the exclusive use and occupancy of the Indians was obviously motivated at least in part by these very considerations. Worcester v. Georgia, 31 U.S. (6 Pet.) 515 (1832). Strengthening tribal autonomy and preserving tribal integrity, however, must necessarily mean protecting the distinctive culture of the tribe, since otherwise there is no sound rationale for separating tribal members from the dominant culture. The Navajo culture, like those of

other tribes, is a complex matrix of belief, custom and practice. The "religious" beliefs of the Navajo underlie and are infused through virtually every aspect of traditional life, and any derogation of a part of that body of belief and practice inevitably weakens the entire structure. The destruction of Rainbow Bridge is a major act of oppression against the Navajo religion, and its effects on the traditional beliefs of the Navajo in the area can be expected to be dire. For the United States to be not merely sanctioning, but sponsoring this act is, amici contend, a bold breach of that lofty standard of responsibility which this Court has held the government owes its wards, and it should not be countenanced.

C. ACCEPTED RULES OF STATUTORY CONSTRUCTION REQUIRE THAT PROBLEMS SUCH AS THOSE RAISED ABOVE BE AVOIDED WHEREVER POSSIBLE.

Amici have set out constitutional rights and fiduciary obligations which, they contend, are being substantially breached as the waters of Lake Powell back up under Rainbow Bridge. Remarkably, however, had the provisions of the Colorado River Storage Act been fully complied with these problems would not have arisen. Congress made adequate provision in the Act for the protection of Rainbow Bridge, and those provisions (Section 1 and 3 of the Act) are easily sufficient to prevent the threat to Navajo culture and religion which amici now see as imminent. It is a common and fundamental rule of statutory construction that, where possible, statutes are to be be construed so as to avoid constitutional

problems. United States v. Congress of Industrial Organization, 335 U.S. 106 (1948); United States v. Harriss, 347 U.S. 612 (1954); American Communications Assoc. v. Douds, 339 U.S. 382 (1950). The decision of the Tenth Circuit Court of Appeals in the instant case, however, in finding an implied repeal of Section 3, casts serious constitutional doubt on the validity of the remainder of the Act, insofar as it can be said to sanction the flooding of Rainbow Bridge National Monument, and that decision is consequently directly contrary to the rule of construction cited above. The unambiguous terms of the Act fulfill the government's duties to amici and other Navajos completely; if the decision of the Tenth Circuit stands, however, grave new questions are raised which involve some of the most deeply held beliefs of amici.

III. CONCLUSION

For the foregoing reasons, amici urge this Court to reverse its earlier order and grant the petition for writ of certiorari.

Respectfully submitted,

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